

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Implementation of Sections 3(n) and) GN Docket No. 93-252
332 of the Communications Act)
)
Regulatory Treatment of Mobile)
Services)

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COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association
("CTIA")¹ hereby submits its comments on the Third Further
Notice of Proposed Rule Making in the above-captioned
proceeding.²

BACKGROUND

The Commission's Rules currently impose a 45 MHz
limitation on the aggregation of CMRS spectrum. This CMRS
spectrum aggregation cap applies only to cellular, SMR and
broadband PCS licensees who are regulated as commercial mobile

¹ CTIA is the international organization of the
wireless communications industry for both wireless carriers
and manufacturers. Membership in the association covers all
Commercial Mobile Radio Service providers, including
cellular, personal communications services, enhanced
specialized mobile radio, and mobile satellite services.

² *In the Matter of Implementation of Sections 3(n)
and 332 of the Communications Act, Regulatory Treatment of
Mobile Services*, GN Docket No. 93-252, FCC 95-156, (released
May 5, 1995) ("Third Further Notice").

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radio services providers.³ In the *Third Further Notice*, the Commission proposes to extend the CMRS spectrum aggregation cap to all cellular, SMR and broadband PCS providers, regardless of their regulatory classification.⁴ Thus, licensees in these services who also provide private mobile radio services ("PMRS") would be subject to a 45 MHz spectrum aggregation cap.

CTIA opposes any proposal which limits the amount of spectrum that a cellular, SMR, or broadband PCS licensee may obtain, regardless of whether the licensee offers CMRS, PMRS or a combination of both. While the Commission has adopted spectrum caps as a precautionary measure to discourage anticompetitive behavior, such measures are inappropriate when, as here: 1) the Commission has clearly demonstrated that the allocation of spectrum and the provision of a substantial number of licensing opportunities are the appropriate methods for enhancing competition in the mobile services market place; 2) the Commission has provided more than adequate restrictions and conditions to ensure that no CMRS provider will exert market power by controlling large amount of spectrum in a given geographic market; and 3) spectrum caps can hinder the innovative and efficient use of spectrum. Accordingly, CTIA

³ See 47 CFR § 20.6 (1994).

⁴ *Third Further Notice*, ¶¶ 1, 4.

strongly urges the Commission not to extend any further the CMRS spectrum aggregation cap.

DISCUSSION

CTIA consistently has advocated the adoption of eligibility requirements and spectrum aggregation limitations that do not needlessly encumber the competitive CMRS marketplace.⁵ In these comments, CTIA respectfully suggests that there is no benefit in limiting opportunities for CMRS providers to obtain additional spectrum to provide supplementary or enhanced services to their subscribers.

I. Spectrum availability and numerous licensing opportunities, not spectrum caps, enhances competition between mobile services.

Where there are numerous licensees and licensing opportunities, there is no benefit in limiting the amount of spectrum that CMRS providers may acquire to meet the public

⁵ CTIA's Comments to Further Notice of Proposed Rule Making, In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252 (filed June 20, 1994); CTIA's Petition for Further Reconsideration, In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GN Docket No. 90-314 (filed July 25, 1995); CTIA's Comments to the Second Further Notice of Proposed Rule Making, In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252 (filed August 9, 1995); CTIA's Reply Comments to the Oppositions and Comments to the Petitions for Reconsideration, In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GN Docket No. 90-314 (filed September 9, 1995).

demand for supplementary or enhanced CMRS or PMRS services. By allocating more than 200 MHz of spectrum for wireless mobile services, the Commission has ensured there will be multiple licensing opportunities for multiple competitors. In fact, the Commission itself correctly has observed that allocating additional spectrum and increasing the number of licensing opportunities are the preferable methods to enhance competition and to serve the public interest.

This year, the Commission granted AMSC Subsidiary Corporation a blanket license to provide the first voice mobile-satellite service in the United States.⁶ By authorizing AMSC to provide mobile-satellite service, the Commission not only augmented competitive opportunities in the mobile service marketplace but also acknowledged that the public interest will be served by its action because "[a] seamless, nationwide, wireless telephone system will become reality through the availability of AMSC Mobile-Satellite Service."⁷ In its proposal to allocate spectrum in the 1990-2025 MHz and 2165-2200 MHz bands for mobile-satellite services, the Commission specifically recognized that "[t]his proposed new allocation of spectrum for [mobile-satellite

⁶ *In re Application of AMSC Subsidiary Corporation for a Blanket License to Construct and Operate up to 200,000 L-Band Mobile Earth Stations, Order and Authorization*, File No. 2823-DSE-P/L-93, DA-95-482, (released March 13, 1995).

⁷ *Id.* at ¶ 16.

services] should create opportunities to provide the public, especially rural Americans, with access to new and competitive services and technologies; stimulate economic development; and create new high technology jobs in the United States.”⁸

The Commission’s decision to eliminate its prohibition on common carriers engaging in radio dispatch services is another example of the Commission’s using licensing opportunities to enhance competition.⁹ The Commission specifically stated that it expects the elimination of the dispatch prohibition will enhance competition by permitting new types of CMRS providers to enter the commercial dispatch service and thereby provide consumers with expanded choice and lower prices.¹⁰ In fact, the Commission agreed with CTIA and its member carriers that by “allowing CMRS providers to provide dispatch in addition to other mobile services will satisfy consumers’ growing demand for integrated services that are customized to fit their individual needs.”¹¹

⁸ *In the Matter of Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, Notice of Proposed Rule Making*, 10 FCC Rcd 3230 (1995), ¶ 1 (emphasis added).

⁹ *In the Matter of Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, Report and Order*, GN Docket No. 94-90, FCC 95-98, (released March 7, 1995).

¹⁰ *Id.* at ¶ 29.

¹¹ *Id.* at ¶ 30.

Furthermore, the Commission has acknowledged that allowing CMRS licensees to provide dispatch services is not likely to result in anticompetitive conduct.¹² Rather than restricting licensees with rules that address the *possibility* of anticompetitive behavior, the Commission correctly adopted a "sentinel" approach: allowing competitive forces to work, carefully watching for anticompetitive conduct, and responding to such conduct, when and if it occurs, through its enforcement authority and the Department of Justice's enforcement authority.¹³

Other specific illustrations of the Commission's desire to use licensing opportunities and spectrum allocation as preferred methods for enhancing competition include: 1) the Commission's adoption of final service rules and proposed auction rules for 900 MHz SMR services;¹⁴ and 2) the

¹² *Id.* at ¶ 32.

¹³ *Id.* at ¶ 32. The Commission has also adopted this approach with regard to CMRS-to-CMRS interconnection regulation. See *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Notice of Proposed Rule Making*, CC Docket No. 94-54, FCC 95-149, (released April 20, 1995), ¶¶ 29, 38-44.

¹⁴ *In the Matter of Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels outside the Designated Filing Areas in the 896-902 MHz and the 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool*, PR Docket No. 89-553, FCC 95-159, (released April 17, 1995). (The Commission specifically states that its twin goals for licensing 900 MHz SMR are to

Commission's proposal to allocate spectrum for the introduction and development of short-range wireless radio systems, e.g., remote wireless access to libraries and other informational databases.¹⁵

II. The Commission already has imposed more than sufficient restrictions to ensure competition.

It appears that the Commission's only rationale for extending the CMRS spectrum cap to a CMRS licensee's PMRS offerings is to discourage anticompetitive behavior.¹⁶ CTIA has provided an extensive record in the Commission's various CMRS and PCS proceedings which demonstrates the competitive nature of the CMRS marketplace.¹⁷ Given this competitive market structure, the Commission adopted rules that impose severe limitations on the use of spectrum to provide

provide service to the public expeditiously and to allow the marketplace to respond to consumer demands.)

¹⁵ *In the Matter of Amendment of Parts 2 and 15 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications, Notice of Proposed Rule Making*, 9 FCC Rcd 7078 (1994).

¹⁶ *Third Further Notice*, ¶ 3.

¹⁷ See Stanley M. Besen and William B. Burnett, Charles Rivers Associates, "An Antitrust Analysis of the Market for Mobile Telecommunications Services," page 57, submitted as an Appendix to CTIA Comments, *In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services*, Gen. Docket No. 90-314, and *State Petitions To Continue Rate Regulation of Commercial Mobile Radio Services*, PR Docket Nos. 94-103 - 94-109.

supplemental and enhanced services for consumers, i.e., broadband PCS overlap and attribution rules, PCS-cellular cross-ownership restrictions, PCS spectrum aggregation cap, cellular-PCS spectrum aggregation cap until January 1, 2000, and the CMRS spectrum aggregation cap. Such restrictions and conditions are more than sufficient to ensure that the public will receive the full benefits of a competitive market. Rather than impose additional limitations on CMRS providers who chose to provide their customers with supplemental and enhanced services through PMRS offerings, CTIA recommends that the Commission utilize the "sentinel approach" which it has adopted for other CMRS services such as dispatch and CMRS-to-CMRS interconnection, to address anticompetitive behavior, when and if it occurs.

III. Spectrum caps can hinder innovative and efficient use of spectrum.

While the Commission may seek to provide greater simplification and certainty to the application of the CMRS spectrum cap to cellular, SMR and broadband PCS licensees,¹⁸ there must be an equipoise between simplification and certainty and the Commission's stated goal to maintain incentives for innovative and efficient use of spectrum.¹⁹

¹⁸ *Third Further Notice, ¶ 4.*

¹⁹ *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of*

Extending the CMRS spectrum aggregation cap can impose a significant burden upon the available spectrum being utilized according to its highest economic use by preventing incumbent carriers from using additional spectrum, whether it is CMRS or PMRS spectrum, to add value to their existing networks and customers. Allowing licensees the freedom to combine or subdivide spectrum to provide supplemental and enhanced services is an excellent way in which to allow flexibility.²⁰

CONCLUSION

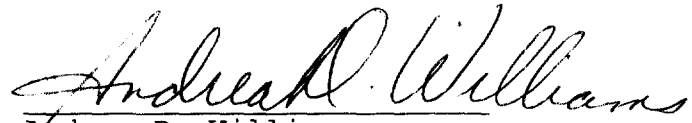
For the foregoing reasons, CTIA strongly opposes the Commission extending the CMRS spectrum aggregation cap to all cellular, SMR, and broadband PCS licensees, regardless of their CMRS or PMRS regulatory classification. CTIA urges the Commission to take this opportunity to reconsider the necessity for any CMRS spectrum cap in view of the arguments set forth above. In the alternative, CTIA recommends the Commission utilize its "sentinel approach" in addressing concerns of anticompetitive conduct with respect to CMRS

Mobile Services, Third Report and Order, 9 FCC Rcd 7988, 8105 (1994), ¶ 251.

²⁰ See Stanley M. Besen, Robert J. Larner and Jane Murdoch, Charles Rivers Associates, "An Economic Analysis of Entry by Cellular Operators into Personal Communication Services," 25-28, submitted as an Appendix to CTIA Comments, *In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services*, Gen. Docket No. 90-314.

providers utilizing PMRS spectrum to supplement and enhance services to its subscribers.

Respectfully submitted,



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